

REMARKS/ARGUMENTS

This Amendment is in response to the Final Office Action of December 22, 2009, in which the Examiner (1) rejected claims 1, 3-4, 13-14 and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,143,428 to Bruck et al. ("**Bruck**") in view of U.S. Patent No. 6,754,904 B1 to Cooper et al. ("**Cooper**") and further in view of U.S. Patent Application Publication No. 2004/0128183 to Challey ("**Challey**"), (2) rejected claims 9-10, 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over **Bruck**, **Cooper** and **Challey**, in view of U.S. Patent No. 4,953,159 to Hayden ("**Hayden**") and (3) rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over **Bruck**, **Cooper** and **Challey**, in view of U.S. Patent No. 6,757,365 to Bogard ("**Bogard**").

Claim 1 had been amended to more directly recite the purpose of the invention. Applicant requests reconsideration in view of the amendments and the remarks herein.

35 U.S.C. §103 Rejections

As stated in earlier papers filed by Applicant and described in the Specification, the present invention has as its purpose the tracking and reporting of data relating to video programming activity by capturing IM content and profile information from an IM server. The IM content is stored and aggregated at a separate survey server, which then generates reports from the aggregated data in order to track programming activity by multiple users, without the survey server having to collect survey data from a user at a user device. Because of the novel use of IM content, the reports not only include the programs being watched by the user, but also other data relating to programming activity obtained from IM content and user profile data. As explained the Specification (paragraphs 0058-0060), use of IM content (rather than merely video programming activity as in prior systems) provides a much broader array of instantaneous, related activity data to be captured about the video programming, such as keywords in IM messages (see, *e.g.*, dependent claim 22), telephone calls being made by IM users watching the video programming (see, *e.g.*, dependent claim 21), the number of IM users chatting while

watching the video program, favorable and unfavorable comments in IM messages, as well as personal profile data associated with the users that have all previously been captured at the IM server (and thus do not have to be separately entered or generated as part of monitoring programming activity).

Bruck, the principal reference, discloses a chat server 99 and a user interface 110 for users to view both a television program at video region 118 and chat transcript concerning that program at a chat region 108.

Cooper discloses a system permitting users to simultaneously view a television program display 900 and a chat room display (Fig. 9; col. 6, lines 19-39). **Cooper** also discloses a set-top box display that includes a TV program 1102 and an enhanced buddy list 1110, with the buddy list including the TV show or network being viewed by each buddy (Fig. 11; col. 7, lines 4-13).

In the Office Action, the Examiner correctly states that **Bruck** and **Cooper** do not teach a separate survey server for performing the general purpose of the invention, namely communicating with the IM server for (among other things) generating reports on the tracked programming activity. The Examiner also correctly states that **Bruck** and **Cooper** do not teach personal profile information stored at the IM server in conjunction with managing IM content, and provided from the IM server to the survey server, so that programming activity being tracked at the survey server can be associated with demographic information of the users collected from the personal profile information, without the demographic information having to be separately entered by users apart from the IM application (see page 5 of the Office Action).

In order to overcome the shortcomings of **Bruck** and **Cooper**, the Examiner now combines **Bruck** and **Cooper** with newly cited **Challey**. The Examiner asserts that **Challey** discloses the features missing from **Bruck** and **Cooper**, and states the rationale that it would be obvious to combine **Challey** and modify **Bruck** and **Cooper** because it would enable “a person to create and/or use a survey” (page 7 of the Office Action).

Applicant respectfully disagrees as to the Examiner's characterization of the teaching of **Challey** and as to the Examiner's stated rationale for combining **Challey** with the other references.

Challey discloses a survey system having a server 104 to facilitate the creation of a survey and to store the survey results in a database 112. The survey system also has a user device 102 for a user to create the survey, a user device 106 for a person to take the survey (generate the data for the survey), and a user device 108 for a person to receive or access the survey results (Figs. 1 and 2; paragraphs 0042 and 0044). The survey system also has a database 112 to store personal information from other applications "regarding people (e.g., names, contact information, roles) who might be invited to take, preview, approve, or otherwise access a survey and/or results of the survey" (paragraph 0043).

Challey, even as combined with **Bruck** and **Cooper**, fails to meet the purpose of the present invention, namely, the tracking of programming activity at a survey server without the survey server having to collect survey data from a user at a user device. As noted above, the present invention permits advantageous use of data generated during an IM session and data stored at an IM server, in order to track data on viewers and their reactions to a broadcast program, based on the IM messages being posted (and the program identifiers associated with the IM messages, and the profile information already collected at the IM server). Thus, the information to be tracked is provided by the IM server. This has numerous advantages, such as taking advantage of data already generated and stored at the IM server and eliminating the need to monitor programming activity at the users' TVs or terminals, and eliminating the need for the survey server to collect survey data from the user. While **Challey** discloses that personal information may be accessed from the database 112, the database 112 is not an IM server. Furthermore, the personal data from the database 112 and used by the survey server in **Challey** is not data being collected and reported for tracking programming activity. Rather, it is data to be used for people to be "invited to take, preview, approve, or otherwise access a survey" (paragraph 0043). Thus, **Challey** does not teach or suggest tracking programming activity (or any other kind of activity) without having to separately collect survey data from viewers.

Neither **Bruck** nor **Cooper** are concerned with tacking and reporting programming activity, and neither has a separate survey server for such purpose. While **Challey** has a survey server, there is no recognition or any suggestion that IM content can be used for tracking programming activity. Rather, in **Challey** the tracking and reporting is done by collecting user data directly from people who are invited to take the survey and to provide data as part of completing the survey (see Abstract; paragraphs 0040, 0084, and 0090-0093).

Thus, **Challey** teaches the collection of survey data directly from invited survey recipients and thus, if anything, teaches away from the present invention.

Applicant also respectfully submits that the Examiner not provided a proper basis for combining **Bruck**, **Cooper** and **Challey** for purposes of teaching the present invention. As noted earlier, the Examiner states that it would be obvious to modify **Bruck** and **Cooper** to include a survey server as taught by **Challey** “to provide a method and apparatus that enabled a person to create and/or use a survey” (page 7 of the Office Action). Such a rationale fails to explain why one would be motivated to use already existing IM content and profile information to track programming activity (as in Applicant’s invention), rather than through the more burdensome process of separately collecting data by sending surveys to users (as in **Challey**).

While the purpose of the present invention was believed clear from the context of the claimed subject matter, Applicant has added language to claim 1 to clarify this purpose, namely, that the reports on programming activity “include data from the aggregated IM content” and “that the IM content representing programming activity is provided to the survey server by the IM server rather than being provided separately by users.” As such, claim 1 is now believed to be even more clearly distinguishable from the cited references.

Dependent claims 3, 4, 9, 10, 12-14, 17, 18, 21 and 22 are each dependent on parent claim 1 and are allowable for at least the same reasons stated above.

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PATENT

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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